

**Petco Insulation Co., Inc. and Connecticut Laborers' Funds a/w Laborers' International Union of North America, AFL-CIO. Case 34-CA-5973**

April 22, 1993

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT  
AND RAUDABAUGH

Upon a charge filed by the Charging Party January 7, 1993, the General Counsel of the National Labor Relations Board issued a complaint against Petco Insulation Co., Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On March 26, 1993, the General Counsel filed a Motion for Summary Judgment. On March 29, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Regional attorney, by letter dated March 10, 1993, notified the Respondent that unless an answer was received by March 17, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a Connecticut corporation with an office and place of business in West Haven, Connecticut, has been engaged as a contractor in asbestos abatement. During the 12-month period ending January

30, 1993, Respondent, in conducting its business operations, provided services valued in excess of \$50,000 to the State of Connecticut, an enterprise directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All laborers employed by Respondent; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

About July 11, 1988, Respondent entered into an "Acceptance of Agreements and Declarations of Trust" whereby it accepted and approved the then-effective collective-bargaining agreements between the Union and the Labor Relations Division of the Associated General Contractors of Connecticut, Inc. (AGC) and the Union and the Connecticut Construction Industries Association, Inc. (CCIA) and agreed to be bound to such future agreements unless timely notice was given. The most recent agreements are effective by their terms for the period April 1, 1991, through March 31, 1993.

About July 11, 1988, Respondent, an employer engaged in the building and construction industry, granted recognition to the Union, and since that date the Union has been recognized as such representative by Respondent without regard to whether the majority status of the Union had ever been established under the provisions of Section 9 of the Act.

For the period from July 11, 1988, through March 31, 1993, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.

Since about September 1, 1992, Respondent has unilaterally and without the consent of the Union failed to continue in full force and effect all the terms and conditions of the collective-bargaining agreements described above, by failing to make the contractually required contributions to the Connecticut Laborers' Health Fund, the Connecticut Laborers' Pension Fund, the New England Laborers' Training Trust Fund, the Connecticut Laborers' Legal Services Fund, and the Connecticut Laborers Annuity Fund. These subjects relate to wages, hours, and other terms and conditions of employment in the unit and are mandatory subjects for the purposes of collective bargaining.

Respondent engaged in the above conduct without prior notice to the Union and without affording the

Union an opportunity to bargain with Respondent with respect to this conduct.

#### CONCLUSION OF LAW

By engaging in the conduct described above, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required payments to the Connecticut Laborers' Health Fund, the Connecticut Laborers' Pension Fund, the New England Laborers' Training Trust Fund, the Connecticut Laborers' Legal Services Fund, and the Connecticut Laborers Annuity Fund, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Petco Insulation Co., Inc., West Haven, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally and without the consent of the Union failing to continue in full force and effect all the terms and conditions of collective-bargaining agreements with the Union, and by failing to make the contractually required contributions to the Connecticut Laborers' Health Fund, the Connecticut Laborers' Pension Fund, the New England Laborers' Training Trust Fund, the Connecticut Laborers' Legal Services Fund, and the Connecticut Laborers Annuity Fund.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make unit employees whole for any loss of benefits or other expenses suffered as a result of the Respondent's failure to make the contractually required contributions to the Connecticut Laborers' Health Fund, the Connecticut Laborers' Pension Fund, the New England Laborers' Training Trust Fund, the Connecticut Laborers' Legal Services Fund, and the Connecticut Laborers Annuity Fund, in the manner described in the remedy section of this Decision and Order.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(c) Post at its facility in West Haven, Connecticut, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

#### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize  
To form, join, or assist any union  
To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT unilaterally and without the consent of the Union fail to continue in full force and effect all the terms and conditions of the collective-bargaining agreements with the Union, and by failing to make the contractually required contributions to the Connecticut Laborers' Health Fund, the Connecticut Laborers' Pension Fund, the New England Laborers' Training Trust Fund, the Connecticut Laborers' Legal Services Fund, and the Connecticut Laborers Annuity Fund.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make our unit employees whole for any loss of benefits or other expenses suffered as a result of our failure to make contractually required payments to the fringe benefit funds. The unit includes the following employees:

All laborers employed by us; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

PETCO INSULATION CO., INC.